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In the Supreme Court of the United States

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OCTOBER TERM, 1972

No. 72-682

LOCAL UNION NO. 749, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO,

Petitioner,

VS.

NATIONAL LABOR RELATIONS BOARD, CALIFORNIA BLOWPIPE & STEEL CO., INC. and SEQUOIA EMPLOYERS COUNCIL,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Supplemental Brief of Petitioner in Support of Petition

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OPENING STATEMENT

Pursuant to Rule 24(5) of the Rules of this Court, Petitioner Union submits herewith its Supplemental Brief to indicate briefly the significance to its Petition of this Court's recent decision in *N.L.R.B. v. Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, No. 71-711,* 41 U.S.L.W. 4074 (Dec. 7, 1972.)

ARGUMENT

This Court's opinion in *N.L.R.B. v. Granite State, etc., supra,* explicitly recognized the contractual nature of the union-member relationship, saying at one point:

"The Scofield case [*Scofield vs. N.L.R.B.* 394 U.S. 423] indicates that the power of the union over the member

> is certainly no greater than the union-member contract. Where a member lawfully resigns from a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct. That is to say, when there is a lawful dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street."

In the case presented by the instant Petition, the Court of Appeals has decided that even under a valid union security clause the union cannot compel a new employee to join the union after 30 days but can only compel the payment of an amount equal to dues and fees. If the decision is to stand, the union will have ironically no more control, even in the union shop, than it can have over the man in the street. The application card is precisely the means by which the union-member contract is entered into and without which there can be no contractual basis for membership or internal discipline.

Granite State presented a question of what discipline the union could impose on employees who had resigned from the union when the union security clause in the collective bargaining agreement was at an end. The instant case presents the question of whether the union security clause in an extant agreement can ever have the meaning of requiring the employee to become a member, as well as to pay fees and dues, so that he might be subject to discipline in the first place. That the payment of money is not coextensive with "membership" under the federal labor policy is implicit from footnote (4) of this Court's majority opinion in *Granite State*:

> "Union-security arrangements requiring employees to pay dues, *though not requiring membership*, has been held not to be an unfair labor practice and therefore

not an excuse for the employer to refuse to bargain collectively for such an agreement, at least where State law allows employees that option. *Labor Board vs. General Motors Corp.*, 373 U. S. 734." (emphasis added)

This Court's decision in *Granite State* fairly envisions the existence of at least some circumstances where the union can discipline members. In the instant case, the N.L.R.B. has convinced the Court of Appeals to duck that issue,[1] but the Respondent-Intervenors boldly draw the inescapable conclusion and tell this Court that the Union can only enforce its constitution and bylaws against those employees "who voluntarily assume full membership" (Brief, page 15). This Court's attention to this fundamental problem is needed in order to confirm that Congress intended that full membership could be compelled, albeit conditioning such a right for labor upon a majority rule concept: first, the employees had to authorize such a clause by secret ballot;[2] secondly, the employees have the present right to vote out the union security clause through Section 9(e) (1) of the Act, 29 U.S.C. 159(e) (1): thirdly, as a protection from even the possible tyranny of majorities, Congress provided that *once an employee became a member* under such a clause, he could not have his employment affected for any reason besides non-payment of fees and dues. The startling conclusion that after all these years membership, under a valid union shop clause, is but a wholly "voluntary" matter destroys the heart of that balance which Congress struck between the rights of the individual and the "institutional needs of the Union" (*Granite State, supra*, Concurring Opinion).

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1. Brief of General Counsel in Court of Appeals, page 12; Opinion of Court of Appeals, Appendix A to Petition, page 3, n. 3.
2. Section 9(f), (g), (h), repealed in 1951.

CONCLUSION

It is respectfully urged that the Petition be granted.

Dated at San Francisco, California, this 28th day of December, 1972.

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